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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,293	01/23/2004	Matt Beaumont	07319-096003	6493
20985	7590	11/26/2004	EXAMINER	
FISH & RICHARDSON, PC 12390 EL CAMINO REAL SAN DIEGO, CA 92130-2081			LAVARIAS, ARNEL C	
			ART UNIT	PAPER NUMBER
			2872	

DATE MAILED: 11/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/763,293

Applicant(s)

BEAUMONT, MATT

Examiner

Arnel C. Lavarias

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 9/27/04, 1/23/04.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 12-16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/23/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of Invention II (Claims 12-16) in the reply filed on 9/27/04 is acknowledged.
2. Claims 1-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/27/04.

### *Oath/Declaration*

3. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

The filing date for the U.S. provisional application 60/181525 is listed incorrectly.

### *Drawings*

4. The drawings were received on 1/23/04. These drawings are objected to for the following reason(s) as set forth below.
5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description:  
Figure 1- Reference numerals 9, 13, 16.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to because of the following informalities:

Figure 2- in the text label for reference numeral 200, 'PCF' has not been previously defined. The full, unabbreviated word or phrase must be included the first time an abbreviation is used.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional

replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

7. The disclosure is objected to because of the following informalities:

Page 2, line 7- insert 'on' after 'based'

Page 2, line 18- '90' should read '99'.

Appropriate correction is required.

8. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

Claim 16 recites the limitation of '...determining an area of a light skin...' in line 3.

However, the term 'light skin' has not been previously defined in the disclosure, and it is unclear what is meant by a 'light skin'.

### *Claim Objections*

9. Claims 12-16 are objected to because of the following informalities:

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Claim 12, line 13- 'commanding' should read 'command'. Claims 13-16 are dependent on Claim 12, and hence inherit the deficiencies of Claim 12.

Claim 13-16 all recite the limitation "said determining differences" in lines 1-2 of Claims 13-15 and lines 2-3 of Claim 16. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation "using said scan of said first aperture" in lines 4-5. There is insufficient antecedent basis for this limitation in the claim.

Appropriate correction is required.

*Allowable Subject Matter*

10. The following is a statement of reasons for the indication of allowable subject matter:

Claim 12 is allowable over the cited art of record for at least the reason that the cited art of record fails to teach or reasonably suggest a method, as generally set forth in Claim 12, the method further including the steps of compensating the calibration data for a difference between the first aperture, and a second aperture that will be used to project light using the plurality of optical devices; and using the compensated calibration data to command each of the plurality of optical devices to produce specified colors. Claims 13-16 are dependent on Claim 12, and hence are allowable at least for the same reasons that Claim 12 is allowable.

The Examiner would like to draw the Applicant's attention to U.S. Patent No. 5528431 to Wilkins. Wilkins discloses an instrument for obtaining a particular tint by using a wheel including a set of color filters (See for example Figures 1-2). In particular,

Wilkins discloses that the wheel including the set of color filters may be calibrated using a separate instrument (i.e. a color analyzer) to generate chromaticity values when a filter wheel is rotated (See Figure 10; col. 8, line 40-col. 9, line 27). However, Wilkins lacks further compensating this calibration data for differences in the calibration instrument aperture and an aperture of another source, and utilizing the new compensated calibration data to produce a specified color using the filter.

The Examiner would like to draw the Applicant's attention to U.S. Patent No. 4093991 to Christie, Jr. et al., of record. Christie, Jr. et al. discloses a spectrophotometer that includes a circular variable interference filter wedge (See for example Figure 1). In addition, Christie, Jr. et al. discloses that the filter (See 19 in Figure 1) is calibrated using a calibration source, such as an arc lamp, to generate bandpass centroid wavelength as a function of angular position data. This data is stored in a wavelength calibration data register for further use (See col. 11, lines 24-61). However, Christie, Jr. et al. lacks further compensating this calibration data for differences in the calibration source aperture and an aperture of another source, and utilizing the new compensated calibration data to produce a specified color using the filter.

The Examiner would like to draw the Applicant's attention to U.S. Patent No. 5852498 to Youvan et al., of record. Youvan et al. discloses an optical instrument including a variable optical filter (See for example Figures 1-2). In particular, Youvan et al. discloses the optical filter (See 32 in Figures 1-2) including bandpass characteristics that vary with angular position. The optical filter is previously calibrated prior to use in the disclosed optical instrument, and the filter is placed at a position of minimum beam

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waist, thus narrowing the bandpass characteristics of the filter. However, this change in aperture size is utilized 'as is', and is not used as part of a second calibration operation for the entire optical instrument, including the optical filter (See col. 5, line 35-col. 7, line 7).

### *Conclusion*

11. This application is in condition for allowance except for the following formal matters:

See Office Action above regarding formal matters drawn to the oath/declaration, drawings, the specification of the disclosure, claim objections, and claims withdrawn from further consideration.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arnel C. Lavarias whose telephone number is 571-272-2315. The examiner can normally be reached on M-F 8:30 AM - 5 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on 571-272-2312. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

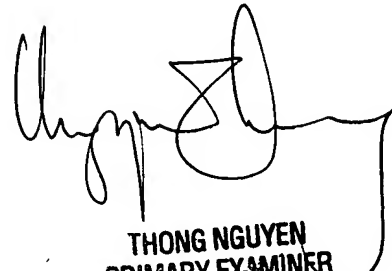


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Arnel C. Lavarias  
11/18/04



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